Supreme Court, U.S.
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No. 97-812

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

ROSETTA HILLARY,
Petitioner,

v.

TRANS WORLD AIRLINES, INC.,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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RESPONDENT TRANS WORLD AIRLINES, INC.'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Eighth Circuit's judgment should be affirmed because the court properly applied and correctly interpreted state law in holding that a dismissal on statute of limitations grounds entered by a district court in Louisiana constituted an adjudication on the merits for res judicata purposes under Louisiana law.

2. Whether the Eighth Circuit's judgment may be affirmed on the alternative ground that Petitioner's Complaint was properly dismissed under the federal common law of res judicata.

RULE 29.6 LIST

Respondent Trans World Airlines, Inc. does not have a parent corporation or any nonwholly owned subsidiaries.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

No. 97-842

ROSETTA HILLARY,

Petitioner,

v.

TRANS WORLD AIRLINES, INC.,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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RESPONDENT TRANS WORLD AIRLINES, INC.'S BRIEF IN OPPOSITION

Respondent Trans World Airlines, Inc. respectfully prays that this Court deny the Petition for Writ of Certiorari seeking review of the Eighth Circuit Court of Appeals' opinion in this case.

STATEMENT OF THE CASE

On March 16, 1987, petitioner Rosetta Hillary ("Hillary" or "Petitioner") allegedly was injured while travelling aboard a Trans World Airlines, Inc. ("TWA") aircraft in St. Louis, Missouri en route from Los Angeles, California to New Orleans, Louisiana, where she then lived. Nearly four years later, on April 5, 1991, Hillary filed a Complaint against TWA in the United States District Court for the Eastern District of Louisiana ("Louisiana case") arising out of the alleged 1987 incident.

The Louisiana district court's jurisdiction was based on diversity of citizenship.

In September 1991, TWA filed a motion for summary judgment on the ground that Hillary's cause of action was barred by the Louisiana statute of limitations. Hillary opposed TWA's motion and, in the alternative, moved the Louisiana district court for voluntary dismissal without prejudice, pursuant to Fed. R. Civ. P. 41(a).

Hillary then filed an identical Complaint in the United States District Court for the Eastern District of Missouri on November 5, 1991, possibly hoping to take advantage of Missouri's longer limitations period.

Shortly thereafter, on November 27, 1991, the Louisiana district court in fact granted TWA's motion for summary judgment, and ruled that Hillary's action was barred by the Louisiana prescriptive period of one year. The Louisiana district court further denied Hillary's motion for voluntary dismissal and dismissed Hillary's Louisiana complaint *with prejudice*. Petition, Appendix at 28-30. Final judgment was simultaneously entered. Petition, Appendix at 31.

In December 1991, TWA moved the Missouri district court to dismiss, or, in the alternative, for summary judgment on the ground that Hillary's claim was barred by res judicata. TWA attached to its Motion the certified copies of the operative pleadings, order of dismissal and judgment in the Louisiana case.

Thereafter, TWA filed suggestions of bankruptcy and the Missouri district court entered an order staying the action. While the Missouri case was stayed, Hillary proceeded to appeal the Louisiana case judgment to the Court of Appeals for the Fifth Circuit. In an unpublished decision, the Fifth Circuit affirmed, holding that to grant Hillary's motion for voluntary dismissal without prejudice would deprive TWA of its absolute defense of statute of limitations. Petition, Appendix at 22-27. This Court denied Hillary's writ of certiorari. Petition, Appendix at 21.

After emerging from bankruptcy, TWA renewed its 1991 motion to dismiss, or, in the alternative, for summary judgment in the Missouri case. On July 17, 1996, the Missouri district court granted TWA's motion for summary judgment, and held that Hillary's lawsuit in Missouri was barred by the doctrine of res judicata by virtue of the final judgment entered in the Louisiana case. Petition, Appendix at 12-20.

Hillary thereafter appealed this decision to the Eighth Circuit Court of Appeals. On August 20, 1997, the Eighth Circuit affirmed the district court's judgment. Petition, Appendix at 1-11.

REASONS WHY THE PETITION SHOULD BE DENIED

I. INTRODUCTION

In her second attempt to obtain a writ of certiorari from this Court, Petitioner Hillary seeks review of a determination, now supported by rulings from the district courts and appeals courts of two circuits, that her cause of action was barred by Louisiana's prescriptive period of one year.

The Eighth Circuit properly applied the principles of res judicata in this case. The Eighth Circuit looks to state law to determine the effect of the judgment of another federal court sitting in diversity. *See Follette v. Wal-Mart Stores, Inc.*, 41 F.3d 1234, 1237 (8th Cir. 1994), *cert. denied*, —— U.S. ——, 116 S.Ct. 66 (1995). Under Louisiana law, Petitioner's claim was barred on res judicata grounds. *See Centanni v. Ford Motor Co.*, 636 So.2d 1153, 1155 (La. App.), *writ denied*, 644 So.2d 656 (La. 1994). The dismissal entered by the district court in Missouri therefore was proper.

Under federal common law, the weight of authority likewise has held that a dismissal with prejudice based upon statute of limitations grounds in one federal court must be given res judicata effect in a subsequent federal

court. *See, e.g., Steve D. Thompson Trucking, Inc. v. Dorsey Trailers, Inc.*, 870 F.2d 1044, 1045 (5th Cir. 1989). Even if federal common law had been applied in this case—as Petitioner now advocates—her claim would have nevertheless been barred.

Hillary has not suggested any principled reason that this Court should disturb the rulings below. The issues raised are well settled under both state and federal law. This is a case with no precedential value; Petitioner seeks relief—to which she is not entitled—based only on her unique set of facts. There has been no designation of an error of the law as it has been applied, and Hillary has failed to demonstrate that there is any conflict in the circuits or with an opinion of this Court that would affect the outcome of this case. This Court, therefore, should deny the Petition for Certiorari.

II. THE EIGHTH CIRCUIT COURT OF APPEALS PROPERLY APPLIED AND CORRECTLY INTERPRETED STATE LAW IN HOLDING THAT A DISMISSAL ON STATUTE OF LIMITATIONS GROUNDS ENTERED BY A DISTRICT COURT IN LOUISIANA CONSTITUTED AN ADJUDICATION ON THE MERITS FOR RES JUDICATA PURPOSES UNDER LOUISIANA LAW.

A. The Eighth Circuit Did Not Err in Applying State, Rather than Federal, Law to Determine the Res Judicata Effect of a Prior Judgment Rendered in a Federal Court Sitting by Diversity.

By advocating the application of the federal law of res judicata in her Petition for Writ to this Court, Petitioner has changed the argument she made in the court below. In the Eighth Circuit, Hillary advocated the application of state law to this case. *See* Petition, Appendix at 4 ("Hillary argues that the preclusive effect of the judgment of the district court in Louisiana is a matter of Louisiana state law because the case was based on diversity jurisdiction."). She therefore has appealed to this Court an issue

upon which she prevailed below, and her argument should be deemed to have been waived.

Moreover, there was no error in the Eighth Circuit's holding that state law determines the res judicata effect of a federal court judgment in a diversity action. Its judgment was based on extensive Eighth Circuit precedent.

Indeed, the Eighth Circuit has noted that it "has consistently looked to state law to determine the effect of the judgment of another federal court in a case where state law supplied the rule of decision. This rule applies when the original judgment is that of another federal court sitting in diversity." *Follette v. Wal-Mart Stores, Inc.*, 41 F.3d 1234, 1237 (8th Cir. 1994), *cert. denied*, —— U.S. ——, 116 S.Ct. 66 (1995). *See also Austin v. Super Valu Stores, Inc.*, 31 F.3d 615, 617 (8th Cir. 1994) ("[C]ases from this circuit have consistently concluded that collateral estoppel in a diversity action is a question of substantive law controlled by state common law."). In applying this rule, the Eighth Circuit has consistently held that "it is fundamental that the res judicata effect of the first forum's judgment is governed by the first forum's law, not by the law of the second forum." *See Austin*, 31 F.3d at 617 (quoting *Semler v. Psychiatric Inst. of Washington, D.C., Inc.*, 575 F.2d 922, 930 (D.C. Cir. 1978)).

This precedent demonstrates that Hillary can assign no error to the Eighth Circuit's ruling that Louisiana law applied to this case. Indeed, Petitioner seems to argue that, because the Eighth Circuit's use of state law is a minority view among the circuit courts, it is somehow incorrect and she is therefore entitled to relief. Petitioner is mistaken. "The federal courts spread across the country owe respect to each other's efforts and should strive to avoid conflicts, but each has an obligation to engage independently in reasoned analysis." *In Re Korean Air Lines Disaster of Sept. 1, 1983*, 829 F.2d 1171, 1176 (D.C. Cir. 1987) (R. Ginsburg, J.). Here, the Eighth

Circuit ruled correctly, and, in fact, in accordance with the position that Petitioner had advocated before it.

Finally, as set forth below, *see infra* at III, even if the Eighth Circuit had reversed its own precedent and applied the federal law of res judicata, the outcome would not be different. Hillary still could not have prevailed. Therefore, even a decision in favor of Petitioner's current position on this issue would not ultimately assist her.

B. The Eighth Circuit Correctly Interpreted Louisiana Law in Barring Petitioner's Action on Res Judicata Grounds.

1. *Under Louisiana state law, Hillary's claim was barred by res judicata.*

Under Louisiana law, all actions arising from the same transaction or occurrence that is the subject matter of a prior final judgment are barred. *See* La. Rev. Stat. Ann. § 13:4231 (West 1997). Thus, a "valid, final judgment in favor of the defendant is conclusive between the parties. It extinguishes all causes of action arising from the same transaction or occurrence that is the subject matter of the suit . . . ." *Centanni v. Ford Motor Co.*, 636 So.2d 1153, 1155 (La. App.), *writ denied*, 644 So.2d 656 (La. 1994). A "grant of a peremptory exception of prescription constitutes a final judgment." *Id.* (citing *Lee v. Champion Ins. Co.*, 59 So.2d 1364 (La. App. 1994)). In other words, a dismissal based upon the expiration of the statute of limitations is a final judgment for res judicata purposes. *See Guidry v. Bayly, Martin & Fay of Louisiana, Inc.*, 545 So.2d 567, 569-70 (La. App.), *writ denied*, 551 So.2d 638 (La. 1989) (holding that a federal court's dismissal of a tort case precluded a subsequent contract suit in state court—not on statute of limitations grounds—but based on the principle of res judicata, and noting that the "[f]ederal [c]ourt judgment is a definitive judgment" constituting "an adjudication on the merits" on the prescription issue, which "definitively re-

solv[ed] the issues between the parties"); *see also Fust v. Fontenelle*, 558 So.2d 715, 719 (La. App. 1990) (holding that summary judgment granted by federal court based on prescription is res judicata in subsequent state court action).

2. *None of the Exceptions Set Forth in La. Rev. Stat. Ann. § 13:4232 (West 1997) Apply.*

Under Louisiana state law, three exceptions exist to the application of res judicata: (1) When exceptional circumstances justify relief from the res judicata effect of the judgment; (2) When the judgment is dismissed without prejudice; or (3) When the judgment reserved the right of the plaintiff to bring another action. La. Rev. Stat. Ann. § 13:4232 (West 1997).

Hillary concedes that the second provision does not apply. *See* Pet'r Br. at 10. Petitioner does, however, suggest that her action was "reserved" under Louisiana state law by the Louisiana district court's noting that it "expresses no opinion as to whether this matter can now be litigated in some other forum that does not apply the Louisiana prescriptive period." *See id.* (quoting Petition, Appendix at 29-30). This argument is disproved by the text of the district court's opinion. The district court did not unequivocally preserve Hillary's right to bring a subsequent action; rather, it simply declined to bar Petitioner from filing the action elsewhere if she properly could do so. She could not proceed in the Eastern District of Missouri, which *does* apply the Louisiana prescriptive period.

Nor can Hillary prevail on the argument that the Eighth Circuit improperly interpreted Louisiana law by ruling that there was no showing of "exceptional circumstances" within the meaning of La. Rev. Stat. Ann. § 13:4232(1) (West 1997). Petitioner insists that "the Eighth Circuit Court of Appeals erred in its finding that the filing in Louisiana of Petitioner's original cause of action . . . did

not constitute the 'exceptional circumstances' contemplated by La. Rev. Stat. Ann. § 13:4232(1)." *See* Pet'r Br. at 10-11.

As a preliminary matter, this Court has stated that it "will not ordinarily consider" issues "neither raised before nor considered by the Court of Appeals." *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 147 n.2 (1970). Because Petitioner did not properly raise below the issue of whether the previous filing created "exceptional circumstances," and because the court below did not consider it, that issue is not properly presented here.[1]

Even on its merits, Petitioner's argument is ill-taken. Hillary appears to argue that, because she filed the Missouri case *before* her Louisiana case was dismissed with prejudice, res judicata should not apply. This theory is inconsistent with Louisiana law. In *Centanni v. Ford Motor Co.*, 636 So.2d 1153, 1155 (La. App.), *writ denied*, 644 So.2d 656 (La. 1994), the appellate court affirmed precisely such a dismissal, stating that "[w]here identical suits are filed in separate jurisdictions . . . the plaintiff may continue the prosecution of any of the suits, but the first final judgment rendered shall be conclusive of all."

Indeed, *Jenkins v. State*, 615 So.2d 405 (La. App.), *writ denied*, 617 So.2d 932 (La. 1993), upon which Hillary relies, is readily distinguishable. Here, there are no "exceptional circumstances, no convoluted factual or legal scenario" and "no circumstances of any kind" to

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[1] Indeed, Petitioner's first invocation of the "exceptional circumstances" exception, as applied to any aspect of her case, was raised for the first time on appeal. The Eighth Circuit therefore properly held the argument to be waived. Petition, Appendix at 8 (citing *United States v. Bentley*, 82 F.3d 222, 223 (8th Cir. 1996); *Standing Bear v. United States*, 68 F.3d 271, 272 (8th Cir. 1995), *cert. denied*, —— U.S. ——, 116 S. Ct. 1444 (1996)). The Eighth Circuit nevertheless examined the claim on its merits, and correctly found it to be wanting. *Id.*

justify a finding that "exceptional circumstances" exist. *See Centanni*, 636 So.2d at 1155 (distinguishing *Jenkins*). Moreover, the first action brought by the plaintiff in *Jenkins* was not dismissed based upon a valid and absolute defense, such as that of statute of limitations.[2] It was dismissed for failure to prosecute. *Jenkins* therefore should be disregarded.

In her discussion of *Jenkins*, it appears that Hillary is arguing that the distinction under Louisiana law between prescription and peremption somehow operates to preserve her claim here. *See* Pet'r Br. at 13. Apparently, Hillary contends that, because the Louisiana district court which initially dismissed this action declined to rule on her ability to bring suit in another forum, her "right to proceed with the action had [been] prescribed and had not been perempted." *See id.*

This allegedly "crucial" distinction between peremption and prescription is, in fact, meaningless. Under Louisiana law, "peremption is but a form of prescription . . . but with the characteristic that it does not admit of interruption or suspension." *Flowers, Inc. v. Rausch*, 364 So.2d 928, 931 (La. 1978). Peremption, unlike prescription, need not be pleaded, and cannot be interrupted, suspended, or renounced. *See Loop, Inc. v. Collector of Revenue*, 504 So.2d 592, 594 (La. App. 1987). However, "[t]hose differences do not support a rule of construction for peremption statutes different from the strict, letter of the law construction rule for prescription. Both prescription and peremption must be construed strictly

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[2] Prescription statutes provide legitimate substantive defenses that in fact go to the merits of plaintiffs' claims. *See United States v. Oregon Lumber Co.*, 260 U.S. 292, 299-300 (1922) (noting that "the defense of the statute of limitations is not a technical defense but substantive and meritorious"; limitations statutes are a "conclusive bar" which "supply the place of evidence lost or impaired by lapse of time, by raising a presumption which renders proof unnecessary.").

because both defeat even meritorious claims by the mere passage of time." *Id.*

Any distinctions between prescription and peremption are irrelevant to this case. The Eighth Circuit never ruled that Hillary's right to proceed had been perempted. Rather, it simply declined to find that "exceptional circumstances" within the meaning of La. Rev. Stat. Ann. § 13:4232(1) existed. This decision reflected a proper application of Louisiana law. *See Centanni v. Ford Motor Co.*, 636 So.2d 1153, 1155 (La. App.), *writ denied*, 644 So.2d 656 (La. 1994) (holding that a judgment on prescription grounds was res judicata as to plaintiff's second action, and noting that the "exceptional circumstances" exception was "designed to protect those drawn into error by an awkward factual or legal scenario, not by those who can allude no circumstances to justify no action at all."); *see also Follette v. Wal-Mart Stores, Inc.*, 41 F.3d 1234, 1238 (8th Cir. 1994) (noting a "highly unusual interplay of transfer and jurisdictional doctrines," in its review of a Texas state court decision, and holding that an "unusual error by a court seem[s] to us a more compelling reason for finding an exceptional circumstance than does the attorney error in *Jenkins*.").

Finally, Petitioner may intend to suggest that attorney error is a reasonable ground for applying the "exceptional circumstances" exception. *See* Pet'r Br. at 12. Under Louisiana law, however, an attorney's mistake or oversight will not toll the statute of limitations. *Jackson v. Pala, Inc.*, 621 F. Supp. 1119, 1121 (D.C. La. 1985), *aff'd*, 787 F.2d 586 (5th Cir. 1986) (dismissing claim as time-barred notwithstanding plaintiff's protestations that he "should not [have been] penalized for the oversight of his counsel", when "he did everything he knew to do to have his claim heard by the court"). If an attorney's error in filing suit after expiration of the limitations period does not toll the statute of limitations, then it certainly would

not constitute exceptional circumstances sufficient to overcome the bar of res judicata.

Petitioner's argument is little more than a complaint that she did not receive extraordinary relief in ordinary circumstances. Petitioner and her counsel—perhaps misguidedly, but nevertheless deliberately—decided upon the federal court in Louisiana as the forum in which to bring Petitioner's claim. Hillary could have easily filed her suit in Missouri in the first instance, but chose to do otherwise. This unfortunate, but foreseeable, mistake[3] should be of no consequence to the application of res judicata here.

III. THE EIGHTH CIRCUIT'S JUDGMENT MAY BE AFFIRMED ON THE ALTERNATIVE GROUND THAT PETITIONER'S COMPLAINT WAS PROPERLY DISMISSED UNDER THE FEDERAL COMMON LAW OF RES JUDICATA.

In an argument diametrically opposed to that presented to the Eighth Circuit,[4] Petitioner assigns as error the fact that state, rather than federal, common law was applied in determining the res judicata effect of her previous claim in Louisiana. Even if federal law had been applied in this

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[3] A long line of precedent clearly sets forth the choice of law issue. In the district courts of the Fifth Circuit, as in every federal court sitting in diversity, federal procedural law and state substantive law apply. *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938). Issues concerning state statutes of limitations are considered substantive for purposes of an *Erie* analysis, *Guaranty Trust Co. v. York*, 326 U.S. 99 (1945), with federal courts in Louisiana applying forum law to the issue of limitations. *Abdul-Alim Amin v. Universal Life Ins. Co.*, 706 F.2d 638, 640 (5th Cir. 1983); *Rohde v. Southeastern Drilling Co.*, Inc., 667 F.2d 1215, 1219 (5th Cir. 1982); *see also Crase v. Astroworld, Inc.*, 941 F.2d 265, 266 (5th Cir. 1991) (Louisiana courts customarily apply the law of the forum to the issue of limitations).

[4] *See* Petition, Appendix at 4 (noting that Petitoner sought application of state law to this case).

case, however, the result would have been the same. Petitioner would not have prevailed.

Under federal law, the doctrine of res judicata bars litigation of a claim if:

> (1) the prior judgment was rendered by a court of competent jurisdiction;
>
> (2) the prior judgment was a final judgment on the merits;
>
> (3) the same cause of action and the same parties were involved in both cases.

Lane v. Peterson, 899 F.2d 737, 742 (8th Cir.), *cert. denied*, 498 U.S. 823 (1990); *Headly v. Bacon*, 828 F.2d 1272, 1274 (8th Cir. 1987); *see also Steve D. Thompson Trucking, Inc. v. Dorsey Trailers, Inc.*, 870 F.2d 1044, 1045 (5th Cir. 1989).

Hillary's complaint here rests with the second element of the tripartite test, and contends that, in light of the Louisiana district court's refusal unequivocally to foreclose her claim in all fora, it "shocks the conscience" that judgment and dismissal with prejudice of Hillary's Louisiana Case was considered a "final judgment on the merits" by the Eighth Circuit. *See* Pet'r Br. at 6. This claim is wrong both as a factual and legal matter.

In dismissing Hillary's claim with prejudice, the district court in Louisiana made no attempt to pre-determine or dictate whether Hillary's claim could go forward elsewhere. It merely stated:

> This ruling does not reach the merits of Plaintiff's claim, and *this court expresses no opinion* as to whether this matter can now be litigated in some other forum that *does not apply the Louisiana prescriptive period.*

Petition, Appendix at 29-30 (emphasis added).

The district court merely stated that it would not foreclose Petitioner's right to bring suit in a forum where the

Louisiana prescriptive period did not apply. Hillary, however, voluntarily filed suit in Missouri, a state within the Eighth Circuit Court of Appeals. The Eighth Circuit *does* apply the Louisiana prescriptive period. *See supra* at II.

Moreover, as a legal matter, even if Missouri had chosen to apply federal common law, Petitioner could not have prevailed. It is generally recognized that when a court dismisses an action on the basis of the statute of limitations, the dismissal constitutes a final adjudication on the merits for purposes of res judicata. *See Austin v. Super Valu Stores, Inc.*, 31 F.3d 615, 618 (8th Cir. 1994) (citing *Guidry v. Bayly, Martin & Fay of Louisiana, Inc.*, 545 So.2d 567, 569-70 (La. Ct. App. 1989)) (holding that dismissal on statute of limitations ground is decision on the merits for preclusion purposes); Fed. R. Civ. P. 41(b) (stating that involuntary dismissal "operates as adjudication upon the merits"); *see also PRC Harris, Inc. v. Boeing Co.*, 700 F.2d 894, 896-97 (2d Cir.), *cert. denied*, 464 U.S. 936 (1983); *Myers v. Bull*, 599 F.2d 863, 865 (8th Cir.), *cert. denied*, 444 U.S. 901 (1979); *Cemer v. Marathon Oil Co.*, 583 F.2d 830, 831-32 (6th Cir. 1978).

Petitioner argues that her subsequent filing in Missouri constituted "immediate and prophylactic action," which rendered unjust the Eighth Circuit's "rigid and narrow-minded application of res judicata." *See* Pet'r Br. at 7. Yet when confronted with factual scenarios nearly identical to this one, circuit courts have held that a decision by a federal court sitting in diversity and applying its state's statute of limitations will be given res judicata effect in a subsequent federal diversity action in a different state, where the statute of limitations would otherwise allow the action to go forward. *See Steve D. Thompson Trucking, Inc. v. Dorsey Trailers, Inc.*, 870 F.2d 1044, 1046 (5th Cir. 1989) (dismissing duplicative claim filed in Mississippi where initial claim had been held barred by Louisiana's one year prescriptive period, and noting that "[a]llowing plaintiffs who fail to comply with appli-

cable statutes of limitations to move the next state over would have the undesirable effect of encouraging forum shopping and rewarding dilatory conduct."); *see also Murphy v. Klein Tools, Inc.*, 935 F.2d 1127, 1128 (10th Cir.), *cert. denied*, 502 U.S. 952 (1991) (applying principle of res judicata where plaintiff filed identical complaint in New Mexico prior to entry of final judgment in Kansas, where action had originally been filed); *Shoup v. Bell & Howell Co.*, 872 F.2d 1178, 1179 (4th Cir. 1989) (holding that dismissal of action by Pennsylvania district court on statute of limitations grounds precluded subsequent litigation of same claim in Maryland federal court).

Well-established legal precedent—as well as policy considerations against forum shopping, dilatory conduct, and duplicative litigation—inform this federal authority, which holds that a dismissal with prejudice based upon statute of limitation grounds in one federal court must be given res judicata effect in a subseqeunt federal court. Hillary could have availed herself of Mississippi's longer limitations period by filing suit there initially. Yet Petitioner affirmatively chose to file her lawsuit in Louisiana, where the prescriptive period was well-established.

Hillary's difficulties, though unfortunate, were self-inflicted. At this juncture, TWA simply should not be required to re-litigate this decade-old claim, when its statute of limitations and res judicata defenses have been valid, absolute, and properly applied.

CONCLUSION

For these reasons, the Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

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